IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 511 of 1981
Date of Decision: 14.3.2007

Smt. Dhan Kaur ...Appellant

Versus

Parkash Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Guarav Chopra, Advocate, for the appellant.

Shri Shailendra Sharma, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for declaration claiming the estate of Havaldar Chanda Singh, on the basis of natural succession was dismissed in appeal.

The plaintiff-appellant filed a suit for declaration to the effect that she is owner in possession of ½ share in the disputed land measuring 125 kanals 10 marlas and that the defendants be restrained from interfering in her possession in the suit land. The plaintiff claimed such declaration on the pleadings that Chanda Singh, her deceased husband was owner of ½ share of the suit land. Chanda Singh died on 10.12.1971 at the age of 70 years. He was survived by his wife, the present plaintiff. It was also pointed out that Harnam Singh, brother's son of the plaintiff was brought up by Chanda Singh in his childhood and was also married by Chanda Singh. After the death of Chanda Singh, the crop standing on the

disputed land was looked after by the plaintiff and Harnam Singh aforesaid. The plaintiff claimed to have taken possession of the disputed land as also the house and movable property left by Chanda Singh, after his death. The defendants claimed themselves to be legatee of Chanda Singh on the basis of Will dated 10.11.1971. The mutation of the estate of Chanda Singh was sanctioned in their favour. The said Will is said to be forged and fabricated document. It was pointed out that no provision has been made in the impugned Will for the maintenance of the plaintiff as well as Harnam Singh. Chanda Singh fell ill after 5.10.1971 and remained as such till his death and was not in sound and disposing mind till his death.

The defendants contested the suit admitting that the plaintiff is widow of Chanda Singh but pleaded that the plaintiff had a great love and affection for her brother's children. She brought her brother's son Harnam Singh against the wishes of Chanda Singh and Harnam Singh had been cultivating the land of Chanda Singh. Chanda Singh wanted that the property should remain in possession of his family, while the plaintiff wanted that the same should go to the children of her brother. Therefore, Chanda Singh executed Will as he had an apprehension that after his death, the plaintiff would alienate the entire property in favour of her brother's son.

In order to prove the Will, the defendants examined DW1 Surinder Kumar Scribe and DW2 Sadhu Singh, an attesting witness. The Will dated 10.11.1971 was produced as Exhibit D.1. In rebuttal, the plaintiff examined PW1 Jaswant Singh, Head Master of the Government School Kokri Butran, who has deposed that Harnam Singh studied in the school from 20.6.1951 to 31.3.1954. He was admitted by Chanda Singh vide admission form Exhibit P.2. The relevant entry in the

School record is Exhibit P.1. He has also deposed that the original admission form regarding admission of Harnam Singh was signed by Chanda Singh. Balwant Singh PW2 has deposed that Chanda Singh was Vice President of the Village Gurudwara Committee and he used to sign the proceedings of the said committee conducted between 6.8.1963 to 15.5.1971. PW4-Chanan Singh and PW5- Mukhtiar Singh have deposed that Chanda Singh remained ill for about two to four months prior to his death. PW6-Bikar Singh is a clerk in the Govt. School Talwandi Malian. He has produced the record to prove that admission form Exhibit PW6/1 was signed by Chanda Singh, deceased in Punjabi. PW8-K.K. Sood, Sub Post Master, Kokri Butran, deposed that Chanda Singh drew his last pension on 5.10.1971.

The defendants produced bonds Exhibits DW5/1 and DW5/2 dated 21.7.1971 securing a loan of Rs. 150 from the Village Cooperative Society. The said bonds bear the thumb impressions of Chanda Singh. The Finger Prints Bureau, Phillaur has submitted an opinion that the thumb impressions of the testator on Exhibit D.1 tallied with the thumb impressions of Chanda Singh on the bonds Exhibits DW5/1 and DW5/2.

Learned trial Court found that no provision, whatsoever, was made for the maintenance of the plaintiff and that no husband can be expected to be so callous as not to make provisions for the maintenance of his widow in the old age. Still further, Harnam Singh was found to have studied in the Government School Kokri Butran, where he was admitted by Chanda Singh. Later, he was admitted in Government School Talwandi Malian and even at that place, Chanda Singh, got him admitted in the School. Even after Harnam Singh joined the Army, he gave

his address as that of Kokri Butran i.e. the village of Chanda Singh. It was found that all the three legatees are minors below the age of 10 years. Therefore, if Chanda Singh really intended to make any Will, he would have preferred Harnam Singh, who is proved to have resided with Chanda Singh for nearly 20 year. The trial Court also found that the loan of Rs.150/- vide Exhibits DW5/1 and DW5/2 are not proved to have been executed. Chanda Singh was a retired hand from the Military and was drawing pension from the exchequer. He was owner of ½ share of the land measuring 125 kanals 10 marlas. Thus, he was possessed of sufficient means of livelihood. The Will is purported to be executed within four months of the execution of the bonds. In the said bonds, the age of Chanda Singh is given as 75 years whereas the attesting witness Sadhu Singh has deposed the age of Chanda Singh as 70 years. In Will Exhibit D.1, the age of Chanda Singh is given as 55 years. Thus, it was inferred that if the Will Exhibit D.1 was a genuine document, then the difference in age in bonds and the Will could not occur. It was also found that the person, who was put up for registration of the sale deed before the Sub Registrar was nearly the age of 50 years and, therefore, the age was given as 55 years in the Will. It is also found that the bonds Exhibits DW5/1 and DW5/2 were got thumb marked from the person, who thumb marked the Will. The Will Exhibit D.1 and bonds Exhibits DW5/1 and DW5/2, appear to have been executed by one and the same person, but it was some other person and not Chanda Singh, deceased. It was found that Chanda Singh was signing all the proceedings at Village Gurudwara Committee until his death and therefore, he could not be expected to have thumb marked the bonds Exhibits DW5/1 and DW5/2 and Will Exhibit D.1. It was found that the defendants have

propounded the forged Will so as to retain the property in the family of Bishan Singh.

It may be relevant to note at this stage that the trial Court has framed Issue No. 2 to the effect whether the plaintiff is entitled to remain in possession of the suit land in lieu of her maintenance. In view of the finding on Issue No. 1 holding that the Will Exhibit D.1 is not proved to be executed, the learned trial Court found that the plaintiff is entitled to succeed to the estate of Chanda Singh. But Issue No. 2 was not decided. In appeal against the said judgment and decree, the learned first Appellate Court set aside the finding on Issue No. 1 in respect of the Will vide judgment and decree dated 18.4.1979. However, the learned first Appellate Court remanded the matter to the learned trial Court to decide Issue No. 2. The plaintiff filed Regular Second Appeal No. 33 of 1979 before this Court. This Court remanded the matter to the learned first Appellate Court for deciding the appeal afresh after sending for the report of the trial Court on Issue No. 2. The apprehension expressed by the appellant that she may not be deprived to challenge the finding on Issue No. 1 in any subsequent appeal was found to be without any basis. After the said remand, the report was called for on Issue No. 2 by the learned first Appellate Court. In report dated 29.4.1980 a finding was returned that the plaintiff is entitled to remain in possession of the suit land in lieu of her maintenance. In view of the said report, the learned first Appellate Court decreed the suit to the extent that the plaintiff is entitled to remain in possession of the disputed property till her right to the quantum of compensation payable by the defendants is determined in accordance with the provisions of Hindu Adoption and Maintenance Act, 1956. Aggrieved by the findings on both the issues, the

plaintiff is in second appeal.

Learned counsel for the parties are at ad-idem that only question, which is required to be decided is whether the Will dated 10.11.1971 propounded by the defendants is proved to have been executed and is not surrounded by the suspicious circumstances and that whether the finding recorded by the learned first Appellate Court upholding the said Will is sustainable in law.

The learned first Appellate Court found that when the evidence adduced in support of the Will is satisfactory and sufficient to prove sound and disposing state of mind of the testator and his signatures as required by the law, the Court would be making a finding in favour of the propounder. It was argued that if the execution of the Will is found to have been proved, the Court would have given effect to the Will. Court found that execution of the Will is proved from the testimony of PW2 Sadhu Singh Lambardar and Scribe Surinder Kumar. PW-2 Sadhu Singh is shown to be not interested either in propounding of the Will or any other way inimical towards the plaintiff and, therefore, there is no reason to discard his testimony. It was found that exclusion of heirs like the widow cannot be called a suspicious circumstance in view of the judgment of the Hon'ble Supreme Court in **Smt. Sushila Devi v. Pandit Krishna Kumar Missir and others AIR 1971 SC 2236**. The Court found that the legatees are minor and the testator has stated in the Will that he is affectionately disposed against them. The Will has been scribed by a regular deed writer and attested by Lambardar. Therefore, the attesting witness would not be a party to the alleged fabrication of the Will. Bishan Singh DW3- father of the legatees has testified that he was not present at the time of execution of the

Will. The non production of other attesting witnesses is inconsequential. The Court found that the trial Court has gone wrong in making far fetched impression that the thumb impressions on the Will are not that of Chanda Singh but of someone else. In regard to the discrepancy in the age, it was found that the villagers in the rural area are known to be prone to make erroneous description in their ages. Similarly, exclusion of Harnam Singh, son of his (Chanda Singh) brother-in-law, cannot be said to be suspicious circumstance surrounding the Will. The learned first Appellate Court has also found that the wife has a right of maintenance in a case of gratuitous transfer, therefore, the dependent has a right to receive maintenance out of the estate. Therefore, it was not necessary for Chanda Singh to provide maintenance for his wife.

I have heard the learned counsel for the parties on the following substantial question of law:-

> "Whether the finding recorded by the learned first Appellate Court that the Will dated 10.11.1971 is proved to be executed and is not surrounded by the suspicious circumstances, is based upon correct appreciation of law?"

Undisputed facts on record are that Chanda Singh was 70 years of age on 10.12.1971. He retired in 1937 from the military service after putting in the service of 18 years and was a pensioner and that he drew his pension on 5.10.1971 for the last time. The defendants- legatees are the grandsons of brother of Chanda Singh, who were aged 2, 5 and 7 years at the time of execution of the Will. The Will Exhibit D.1 is purportedly executed on 10.11.1971 i.e. a month before the death of Chanda Singh and is thumb marked. The Will was registered on the same date

before the Sub Registrar, Zira.

It is well settled that onus to prove the Will is always on the person, who propounds the Will. Apart from the proof of execution of the Will, the propounder is also to dispel the suspicious circumstances surrounding the Will. The question, which arises is whether the reasons given by the learned first Appellate Court in holding that the execution of the Will is proved to be executed and is not surrounded by suspicious circumstances are the reasons germane in law or that such reasons are wholly inadmissible and untenable on the basis of which the Will dated 10.11.1971 cannot be said to be proved to have been executed or free from suspicious circumstances.

After hearing the learned counsel for the parties at great length and going through the evidence on record, I am of the opinion that the learned first Appellate Court has committed grave illegality in holding that the execution of the Will dated 10.11.1971 stands proved. The will is thumb marked. The thumb impressions are sought to be proved from the thumb impressions on the bonds Exhibits DW5/1 and DW5/2. The said bonds are purportedly executed on 21.7.1971 i.e. four months prior to the death of the Testator.

Vide bond Exhibit DW5/1 Chanda Singh is purported to have taken a loan of Rs.150/-. Kartar Singh and Sardara Singh stood surety for him at that time. Vide bond Exhibit DW5/2 Sardara Singh secured the loan from the Society and Chanda Singh and Kartar Singh stood surety for him. Neither Kartar Singh nor Sardara Singh has been examined by the defendants to prove that in fact Chanda Singh was the person, who has taken loan of Rs.150/- from the Society. It has been rightly taken into

consideration by the learned trial Court that Chanda Singh was not only a pensioner but also owner of ½ share of land measuring 125 kanals 10 marlas. Obtaining of loan of Rs.150/- in these circumstances is unbelievable. Still further, the thumb impressions are appearing only on the bonds and the Will both executed within a span of four months. On the other hand PW2 Balwant Singh has deposed that Chanda Singh has been signing all the proceedings of Village Gurudwara Committee from 6.8.1963 until his death. If Chanda Singh was signing for such a long period, why in July, 1971, he would thumb mark the bonds for a meagre amount of Rs.150/-, is not explained.

The admission forms Exhibits P.1, P2 and PW6/1 pertaining to the period of 1951 or later, also bear the signatures of Chanda Singh. Such documents are found to be proved by PW1-Head Master, Govt. School Kokri Butran, and PW6 Clerk of the Government School Talwandi Malian, who has brought the record. Thus, it is apparent that the deceased used to sign for long number of years. His thumb impressions are not available on any other document except bond for Rs.150/-. The execution of the bonds and that too bearing thumb impressions is highly suspicious and such suspicion has not been dispelled by the defendants.

The finding recorded by the learned first Appellate Court that the villagers in the rural areas are discrepant about their age, is again based upon mere conjectures and surmises. In the present case, Chanda Singh, has been found to be signing the documents. He retired from the military in 1937, the fact which is admitted by the defendants in their written statement. He was a pensioner, again a fact not disputed in the written statement. It is unbelievable that such a person will give different

age in two documents executed within a span of four months. In Bonds Exhibits DW5/1 and DW5/2, the age of Chanda Singh is reflected to be 75 years whereas in the Will the same is mentioned as 55 years. It is admitted by the defendants in the written statement itself that Chanda Singh was of 70 years of age. Therefore, it is apparent that the executant of the documents was not aware of the correct age of the deceased and therefore, the age as per the convenience was recited in the bonds and in the Will.

The fact that Chanda Singh has drawn his last pension on 5.10.1971, is admitted in the written statement and no cross-examination was effected on PW8 -K.K. Sood, Sub Post Master. The Will is executed on 10.11.1971, whereas Chanda Singh has died exactly a month later, on 10.12.1971. If Chanda Singh was satisfied with the services rendered by defendant Nos. 1 to 3, he could very well execute a Will and get it registered when he was in sound disposing state of mind i.e. when he was withdrawing pension himself. The fact that Chanda Singh has not withdrawn pension after 5.10.1971 supports the circumstance explained by the plaintiff and her witnesses that Chanda Singh was ill for about 2-3 months prior to his death. Still further, Chanda Singh was not known to scribe Surinder Kumar personally. He is not able to depose about the appearance of Chanda Singh as well. Sadhu Singh, the other attesting witness has deposed that another attesting witness Anup Singh is the real brother of Bishan Singh. The non-examination of such witness is a relevant factor, which was taken into consideration by the trial Court but brushed aside by the learned first Appellate Court. Sadhu Singh has admitted that Chanda Singh usually used to sign. The attesting witness is not even aware that Chanda Singh has fallen sick prior to his death though he has stated that

he was visiting Chanda Singh in his house. He is not even aware that the legatees are minors. Thus, it appears that Sadhu Singh has been introduced as a witness to depose on the dotted lines and he is not aware of the family of Chanda Singh and that of the legatees.

The Will has been executed in favour of defendant Nos. 1 to 3 on account of rendering of services by the aforesaid defendants. The said defendants are minors aged 2, 5 and 7 years. There is no evidence that the deceased was residing with the family of his brother or with his nephew Bishan Singh. In fact, there is overwhelming evidence to the effect that the plaintiff and Chanda Singh used to reside together and in fact, Harnam Singh, nephew of the plaintiff was brought up by Chanda Singh since the year 1951. Though Harnam Singh joined the Army but still he had give his address as that of the village of Chand Singh. Therefore, there was no reason for Chanda Singh to execute the Will in favour of defendant Nos. 1 to 3 with whom he had no special love and affection. There is no reason as to why the plaintiff was disinherited from the property. The right to claim maintenance to be established by the process of Court, would be probably the last thing which will come to the mind of the deceased Chanda Singh so as to execute the Will in favour of the defendants and force his wife to enforce her right of maintenance, through the process of Court. Thus, in the absence of any reason to disinherit the plaintiff or in the absence of any reason to prefer the defendants, the defendants have failed to dispel the suspicious circumstances surrounding the execution of the Will. The discussion above leaves no manner of doubt that the learned first Appellate Court has drawn wrong inferences by applying the law erroneously. In fact, the first Appellate Court misdirected itself in appreciating the question of

proof of Will.

Therefore, I am of the opinion that the findings recorded by the learned first Appellate Court that mere deposition of the scribe and attesting witness is sufficient to prove execution of the Will, is neither the correct proposition of law nor made out in the facts of the present case. The learned first Appellate Court has gravely erred in law reversing the cogent reasons recorded by the learned trial Court. The learned first Appellate Court has proceeded on erroneous assumptions of law applying the wrong principles of law and reversed the findings on the basis of surmises and conjectures.

Consequently, the present appeal is allowed. The judgment and decree passed by the learned first Appellate Court is set aside and that of the learned trial Court is restored.

14.3.2007 (HEMANT GUPTA)
ds JUDGE